

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Broadcast Digital Copy Protection)	MB Docket No. 02-230
)	
)	

To: The Commission

COMMENTS OF NATIONAL BROADCASTING COMPANY, INC.

National Broadcasting Company, Inc. (“NBC”), hereby submits these comments in response to the Notice of Proposed Rule Making (the “*Notice*”) in the above-captioned proceeding, which asks whether the Commission should approve digital copy protection – or, more precisely, digital redistribution protection – technology for digital broadcast television (the “broadcast flag”) and require the developers of consumer electronics and computer equipment to include technology in that equipment that responds appropriately to the broadcast flag.¹

NBC supports the adoption and implementation of a digital broadcast flag. For a host of reasons, including the importance of the continued viability of free broadcast television model that has served the nation for 50-plus years, the Commission has rightly concluded that a rapid transition to digital television best advances the public interest. The most critical precondition to a rapid digital transition is a consumer public convinced of the benefits of digital. Under the current transition regime set forth by Congress, and the understandable reluctance to

¹ Pursuant to the Media Bureau’s Order issued October 11, 2002, the comment deadline for this proceeding was extended until December 6, 2002. Accordingly, these comments are timely filed.

deny considerable segments of the U.S. population access to over-the-air television broadcasts, the digital transition will not be completed without overwhelming consumer participation.²

The broadcast flag is an important step in persuading the consumer of the benefits of digital television. Currently, broadcast television is the leading delivery system for digital transmission of high-definition television programming. NBC alone has invested approximately \$100 million in facilities and infrastructure to make available high definition digital content, and currently is broadcasting 60 percent of its prime time and late night programming, plus other special events, in 1080i format, which is the highest digital resolution now possible.

But broadcast television's ability to drive the digital transition will continue only insofar as broadcast television can transmit quality programming. This in turn depends on the continued willingness of program providers to allow television broadcasters to transmit their programming in digital. However, unless program providers' understandable fears of digital piracy in the wake of Napster and other examples of unauthorized widespread distribution of digital content are addressed, broadcasters will not be able to transmit in digital the same quality programming currently transmitted in analog. If consumers cannot enjoy the same programming in digital that they can enjoy via analog, they are unlikely to invest the thousands of dollars necessary to upgrade their home video equipment to access digital broadcast transmissions. This will unavoidably delay the transition to digital.

In order to provide additional protection to digital programming providers and to reassure consumers that digital broadcast television will transmit the same or higher quality programming to which they have grown accustomed via analog broadcast television, the

² See 47 U.S.C. § 309(j)(14) (requiring at least 85 percent of the television households in relevant market to own at least one digital-capable television receiver before that market's stations will be required to surrender its analog television license).

Commission should establish a standard for a digital broadcast flag and require that consumer electronic and computer equipment manufacturers take steps to incorporate technology into new digital equipment that will respond appropriately to that flag. The Motion Picture Association of America, in its comments to this proceeding, outlines a reasonable approach as to a real-world safeguard against unauthorized redistribution of digital broadcast content.³ NBC also supports continuing Commission's consideration of watermarking technologies or other technologies designed to protect digital intellectual property from illegal use. Moreover, because the broadcast flag solution (and related equipment mandate necessary to effectuate that solution) proposed by MPAA is strictly content-neutral, the Commission has ancillary authority to mandate its implementation as a necessary element to facilitate the digital transition by the statutory deadline imposed by Congress, and, as a larger matter, to preserve the future viability of the existing television broadcast industry.⁴

³ See, e.g., Comments of Motion Picture Association of America, *et al.* ("MPAA Comments"). NBC understands that the Commission may need, on an ongoing basis, to refine details of MPAA's extensive proposed flag regulation.

⁴ See, e.g., *Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, Second Report and Order and Second Memorandum Opinion and Order, MM Docket 00-39 at ¶ 35 (citing digital transition requirements of Section 309(j) as justification for imposing technical requirements on consumer electronics manufacturers). The Communications Act's Section 336, which establishes the Commission's jurisdiction over the digital transition, and Section 303(g), which directs the Commission to encourage the more effective use of broadcast technologies in the public interest, provides a concurrent basis for taking action that might threaten the fundamental economic viability of the television broadcast model that has served the public interest for more than a half-century. The Commission has a further reason to protect television stations' access to programming in digital format. Section 73.624(f) of the Commission's Rules obligates stations to simulcast an increasing percentage of their analog programming over their digital channels. If program providers deny television stations the right to air existing programming digitally, television stations may be forced to cancel or adjust existing analog programming in order to satisfy the Commission's simulcast requirements.

NBC recognizes that any incorporation of broadcast flag recognition technology in consumer electronics and computer equipment should seek to minimize the impact on the consumer and to maximize the consumer's interest in transitioning to digital television. To this end, MPAA has indicated that the broadcast flag is designed to prevent only unauthorized redistribution of digital broadcast television content, not to prevent the consumer's legal use of the content. Consumer electronics and computer equipment manufacturers likewise should attempt to minimize the impact that the inclusion of broadcast flag recognition technology imposes on the consumer, either as a matter of cost or ease of use. This effort to minimize the impact on the consumer is not just a good general policy, but necessary to speed the digital transition. In the analog regime, the consumer, within specific and broadly accepted legal parameters, can copy audio and video content without any real technological barrier. If the digital regime unduly burdens the consumer's long-established and legal use of content, consumers may be more likely not to embrace digital television, a result that would run counter to a fundamental reason why NBC supports the broadcast flag.


Free, over-the-air television station continues to serve the public interest – as a provider of critical local news and other programming and as a key competitor to other video content providers. Broadcast television, in part because it is the aspect of the video programming market most subject to direct Commission regulation, also has served as a standard for other video content providers. The transition to digital, and the advent of other technologies, will require the Commission to decide to what extent it will act to preserve the continued viability of the broadcast television model that has served the public since its inception. NBC applauds the Commission's willingness again to consider whether it needs to mandate the inclusion (or exclusion) of a particular technology into consumer (and other) equipment in order

to preserve the fundamental viability of television broadcast stations, and encourages the Commission to continue to raise such issues as advancing technologies require.

Accordingly, NBC supports the adoption of a digital broadcast flag and/or watermarking technology and asks the Commission to require relevant manufacturers to include the technology necessary to implement such safeguards.

Respectfully submitted,

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